IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5320 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PUNJABHAI BHOJABHA VADHER

Versus

CHIEF OFFICER

Appearance:

1. Special Civil Application No. 5320 of 1999

MR PJ YAGNIK for Petitioner No. 1

MR MINESH C DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 22/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr.P.J.Yagnik on behalf of the petitioner and learned advocate Mr.M.C.Dave for the respondent Municipality.

The petitioner was working as the Gardener with the respondent Municipality. Initially, he was appointed by the Municipality as Assistant Gardener in the year 1965. Thereafter, by Resolution No.25 dated 10th October, 1975 of the General Board, the petitioner was promoted to the post of Gardener from 1st November, 1975 in the scale of Rs.125-160/-. It is case of the petitioner that according to his date of birth recorded in the service book, the petitioner is required to be retired on 31.7.2001. The contention raised by the petitioner in the present petition that the post of Gardener is Class-IV cadre post and therefore, the age of retirement on superannuation is 60 years and not 58 years and therefore, the respondent Municipality has wrongly retired the petitioner at the age of 58 years and therefore, preferred this petition.

On behalf of the respondent Municipality, the Chief Officer Shri A.R.Pathak has personally remained present before this Court. Learned advocate Mr.Manish Dave representing the respondent Municipality, both have agreed to one fact that according to the order passed by the Director of Municipality, Rajkot while implementing the pay scale for the employees working in Limbdi Nagarpalika dated 30th June, 1994 wherein, post of Gardner at Item No.16 is shown as the Class-IV post in the pay scale of Rs.775-1025/-. Therefore, this scale has been sanctioned by the Director of the Municipalities by his order dated 28th October, 1991. Therefore, in light of this fact, the Chief Officer Shri Pathak as well as learned advocate Mr.Manish Dave are not disputing the fact that post of Gardener is Class-IV post and for any employee working in Class-IV post, the age of superannuation is 60 years. Accordingly, the petitioner is entitled to remain in service upto completion of 60 years. But he made to retire after completion of 58 years on 31st July, 1999. Therefore, the petitioner is entitled to remain in service till 31st July, 2001. Therefore, the petitioner is entitled to salary of two years period with all consequential benefits upto 31st July, 2001.

Learned advocate Mr.Manish Dave has submitted that the financial position of the respondent Municipality is very weak and there are no source of income in the respondent municipality. Not only that it is also submitted that the respondent Municipality is not able to pay regular salary to the existing employees and regular salary has been paid to the employees presently on establishment after a period of six to eight months.

It is also pointed out that they are not able to pay retirement benefits to the retired employees and therefore, learned advocate Mr.Manish Dave submits that some considerable and reasonable time may be given to the respondent municipality for making payment for two years and other consequential benefits on that basis so that the respondent Municipality can make their best efforts to make the payment to the petitioner by way of installment or within some reasonable time.

Learned advocate Mr.Yagnik for the petitioner has submitted that it is true that there is financial constraints with the respondent Municipality but they should make the payment against the legitimate dues to the petitioner within some reasonable time, so atleast, the petitioner can maintain his family. He also emphasized that the salary of the petitioner on the basis of the 1987 pay scale which was fixed in the pay scale of Rs.775-1025. But thereafter pay has been revised by the State Government with effect from 1.1.1996. Therefore, the petitioner is entitled to revision of pay scale with effect from 1.1.1996 till 31.7.2001. Therefore, the request is whatever salary is available to the petitioner on account of correct age of superannuation which is held to be upto 60 years, the petitioner is entitled to scale which is revised at Rs.775-1025/-.

Learned advocate Mr.Manish Dave and the Chief Officer have agreed that whatever scale has been revised in respect of the Class-IV category in the municipality, the same will be given to the petitioner but their request is only as regards grant of some considerable time on account of the financial constraints faced by the respondent Municipality so that they will make their sincere efforts to make the payment to the petitioner.

In above view of the matter and considering submissions made by the learned advocates for the parties, so also, considering the financial constraints of the respondent Municipality, the respondent Municipality is directed to pay to the petitioner whatever benefits available to the petitioner in pursuance of the present order of extending his age limit upto 60 years i.e. 31st July, 2001, and the same shall be paid by the Municipality to the petitioner on the basis of the revised salary having effect from 1.1.1996 and other retirement benefits within some reasonable time by regular installment to the petitioner. It may also be clarified that this also includes the remaining retirement benefits which are not paid to the petitioner on the basis of the age of superannuation of 58 years.

Learned advocate Mr.Manish Dave and the Chief Officer Shri Pathak have, however, requested and made suggestion that at least six months they are not able to make any payment to the petitioner on account of financial constrains but after a period of six months, they will pay the same by way of periodical installment to clear up the dues of the petitioner as per the order passed by this Court. However, learned advocate Mr.Manish Dave and the Chief Officer have agreed that the respondent Municipality will see that earlier retirement benefits which remained unpaid, they will make their sincere efforts to make the payment to the petitioner along with other employees who are getting installment from the Municipality and they will see that installment of equal amount is paid to the petitioner towards his past dues so that the petitioner can maintain his family.

In view of above submissions, it is also directed to the respondent Municipality to see that as per the order passed by this Court, whatever legal dues and benefits available to the petitioner, the same shall be paid to the petitioner within some reasonable time without any default from their side. However, this Court expects that the respondent Municipality will see that the entire dues available to the petitioner as per the order of this Court including the past dues, shall be paid to the petitioner within two years from the date of receipt of copy of this order but it will be open to the respondent Municipality to move this Court by way of appropriate application in case of difficulty for extension of time on genuine ground.

Present petition accordingly stands allowed to the extent indicated above.

Rule is made absolute accordingly with no order as to costs.

Direct Service permitted.

Date : 22.9.2003 [H.K.Rathod, J.]

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